

TITLE 16. Medical Board of California

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at Doubletree by Hilton – Torrance – South Bay, 21333 Hawthorne Boulevard, Torrance, CA 90503 at 9:00 a.m. on May 4, 2012. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 23, 2012 or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific the provisions in Section 2236.2 of the Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt Section 1355.45 in Article 1, Chapter 2, Division 13, defining the notice required of a physician and surgeon in order to restore the license to active status following a period of incarceration after the conviction of misdemeanor; and, the license status description to be posted on Board's Internet site, to reflect current law.

Current law authorizes the Board to automatically place a physician's and surgeon's certificate on inactive status during any period of time that the holder of the certificate is incarcerated after the conviction of a misdemeanor. A physician's and surgeon's certificate which has been placed on inactive status pursuant to this law shall be returned by the Board to its prior or appropriate status within five business days of receiving notice that the physician is no longer incarcerated.

The proposed regulation will implement, interpret, and make specific the type of notice required to be submitted to the Board when the physician is no longer incarcerated. This regulation will also provide a definition to the public of the term "inactive" when posted to the Board's Internet site in connection to a physician who is incarcerated and unable to practice medicine. The Board notes that the status of a physician's and surgeon's certificate must be posted on its Internet site pursuant to the provisions of Sections 803.1 and 2027 of the Code.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant adverse economic impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effects on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The Board does not license businesses, the Board licenses individuals; therefore, there is no impact on small businesses or any business.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice. Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website:
http://www.medbd.ca.gov/laws/regulations_proposed.html.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Natalie Lowe, Enforcement Analyst
Medical Board of California
Address: 2005 Evergreen Street, Suite 1200
Sacramento, CA 95815
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Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Chris Valine
Medical Board of California
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Sacramento, CA 95815
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Website Access: Materials regarding this proposal can be found at:
http://www.medbd.ca.gov/laws/regulations_proposed.html.

Medical Board of California
Inactive License – Misdemeanor Convictions
Specific Language

1. Adopt Section 1355.45 of Title 16, Division 13, Chapter 2:

Section 1355.45. (a) For purposes of subdivision (b) of section 2236.2 of the Code, "notice" means a certified copy of a release issued by the applicable local jurisdiction where the licensee was incarcerated which is provided by the licensee either by regular mail or by personal service, at the option of the licensee.

(b) Whenever a license is placed on inactive status pursuant to section 2236.2 of the Code, the Board shall display the status of the license as follows: 'Inactive License - Misdemeanor Conviction. Licensee was convicted of a misdemeanor and is currently incarcerated. No practice is permitted.'

NOTE: Authority cited: Section 2018, Business and Professions Code. Reference: Section 2236.2, Business and Professions Code.

**MEDICAL BOARD OF CALIFORNIA
INITIAL STATEMENT OF REASONS**

Hearing Date: May 04, 2012

Subject Matter of Proposed Regulations: Inactive License – Misdemeanor Convictions

(1) Section Affected: Title 16, Section 1355.45

Introduction

On August 3, 2011, Governor Edmund Brown signed Assembly Bill 1267 (AB 1267) (Halderman) which added Section 2236.2 to the Business and Professions Code effective January 1, 2012. This statute requires that the Board automatically place a physician's and surgeon's certificate, commonly known as a medical license, on inactive status during any period of incarceration after a misdemeanor conviction and requires that the board return the license to its prior or appropriate status within five days of receiving notice that the physician is no longer incarcerated.

Specific Purpose of each adoption, amendment, or repeal:

This proposed regulation defines the notice that the Board will accept to restore the physician's and surgeon's license to its prior appropriate status.

Business and Professions Code Section 803(B)(5) requires that the Board define the status of a license in regulation when disclosing that information on the Board's Internet site. This proposed regulation would provide a definition for the inactive license status as it applies to incarceration.

Factual Basis/Rationale

The Board has determined that it will accept a certified copy of a release issued by the applicable local jurisdiction where the physician was incarcerated as acceptable evidence that the physician is no longer incarcerated. The physician may provide the certified copy to the Board by either regular mail or by personal service and the Board will restore the license to its prior appropriate status. The Board currently accepts certified documents from the courts as acceptable evidence of a criminal conviction. Defining "notice" as a certified copy of the release from the applicable jurisdiction is consistent with existing practice.

The proposed regulation also provides a definition for the license status which will be displayed on the Board's Internet site when the physician's status is changed to inactive due to incarceration. The Board proposes that the status be updated to reflect: "Inactive Status – Misdemeanor Conviction" which will include a definition indicating that "Licensee was convicted of a misdemeanor and is currently incarcerated. No practice is permitted." The Board believes that this disclaimer provides sufficient explanation and information for the public to identify the physician's current status. The verbiage proposed is consistent with the Board's existing statuses and definitions provided to the public.

The proposed regulation will protect consumers in California by providing sufficient information to make an informed decision on their health care provider. By law, public protection is the highest priority of the Board, and the public protection is enhanced when patients and other

interested parties are made aware of the license status of a physician and any restrictions that may be imposed on the certificate.

This proposed regulation will also allow the license status to be updated in a timely manner upon the proper notice that a physician is no longer incarcerated.

Factual basis for determination that each proposed change is necessary:

Per section 2236.2 of the Business and Professions Code the Board shall adopt regulations that specify the type of notice required to be submitted to the Board and the information that will be provided to the public through the Board's Internet site.

As specified above, public protection is the highest priority of the Board whenever it exercises its regulatory authority, and this proposal is consistent with that objective, as an informed consumer is in a better position to make reasoned choices for him/herself.

Underlying Data

Technical, theoretical, or empirical studies or reports relied upon (if any): none

Business Impact

☒ This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This regulation will only impact physicians who have been placed on inactive status following incarceration due to a misdemeanor conviction.

Specific Technologies or Equipment

☒ This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

No alternatives were considered as the law requires the Board to adopt regulations to specify the type of notice required to be submitted to the Board, and requires disclosure on the Board's Internet site of the license status.